PERBADANAN PR1MA MALAYSIA v. PERBADANAN ASET KERETAPI

HIGH COURT MALAYA, SEREMBAN
AZIZUL AZMI ADNAN J
[ORIGINATING SUMMONS NO: NA-24NCVC-188-08-2021]
22 DECEMBER 2022

Abstract – *As provided by the closing words of s. 93 of the Railways Act 1991, all titles bearing the name of the Federal Lands Commissioner ('FLC'), in respect of properties vested pursuant to s. 93, would be construed as being in the name of the Railway Assets Corporation ('RAC'). Therefore, the subject land in this dispute could not have been validly transferred from the FLC to a statutory corporation given that property in the subject land would have vested in the RAC.*

LAND LAW: *Caveat – Removal – Land registered in name of Federal Lands Commissioner ('FLC') and gazetted as railway reserve – Land transferred from FLC to statutory corporation – Railway Assets Corporation ('RAC') lodged caveat over land – Whether subject land could be transferred from FLC to statutory corporation – Whether property vested in RAC – Whether RAC had caveatable interest over land – Railways Act 1991, ss. 92 & 93*

The plaintiff was tasked with the responsibility to undertake an affordable housing scheme within the Seremban Sentral development. The plan would involve the conversion of lands currently specified as railway land, including the subject land in the present dispute. No agreement was ever signed between the plaintiff and the defendant but work progressed on the site that had been earmarked. Prior to its transfer to the plaintiff, the subject land was registered in the name of the Federal Lands Commissioner ('FLC') and gazetted as railway reserve. The subject land was transferred from the FLC to the plaintiff. The defendant lodged a caveat over the subject land. Hence, the present application by the plaintiff to remove the private caveat. The issue that arose for adjudication was whether the subject land could validly be transferred from the FLC to the plaintiff given that, pursuant to ss. 92 and 93 of the Railways Act 1991 ('Act'), property in the subject land would have vested in the defendant.

Held (dismissing application):

(1) There was nothing in evidence that would cause the court to disagree with the defendant's position that the subject land had vested in the defendant pursuant to s. 93 of the Act. If the subject land was, in law and in fact, the property of the defendant, how had the transfer been effected from the FLC to the plaintiff without the assent or even knowledge of the defendant at the material time? It appeared that, absent

such consent, the FLC would not have been seised with the capacity to effect the transfer of the subject land to the plaintiff, for even though its name was on the title, the actual owner, by reason of the closing words of s. 93 of the Act, was the defendant. The closing words of s. 93 of the Act provide that all titles bearing the name of the FLC, in respect of properties vested pursuant to s. 93 of the Act, would be construed as being in the name of the defendant. Therefore, the defendant possessed a caveatable interest over the subject land. (paras 15, 16 & 17)

Obiter:

(1) The dispute between the parties was never a real legal dispute over the ownership of the land but, for all practical purposes, centred upon the question of fair compensation that was to be given to the defendant for the surrender of its railway lands to the project. There were a small number of disputes which ended up being litigated in the courts but which ought more properly and effectively addressed outside the justice system. This was one such case. The glaringly obvious solution was for the matter to be escalated up the chain of command so that a mutually acceptable solution could be attained. This was not done in the present instance. (paras 19, 21 & 22)

Legislation referred to:
Railways Act 1991, ss. 92, 93

For the plaintiff - Abu Daud Abd Rahim & Ahmad Fadhli Umar Aminolhuda; M/s Azmi & Assocs
For the defendant - Andrew Teh & Tan Chong Pei; M/s Wong Lu Peen & Tunku Alina

Reported by Najib Tamby

JUDGMENT

Azizul Azmi Adnan J:

Introduction

[1] The plaintiff in this case, Perbadanan Pr1ma Malaysia (referred to here as "Prima") applied for an order to remove a private caveat over a piece of land located in Seremban. The plaintiff is a statutory corporation established under the Perumahan Rakyat 1Malaysia Act 2012. The private caveat was entered by the defendant, Perbadanan Aset Keretapi. The defendant is also a statutory corporation, established under the Railways Act 1991. I refer to the defendant in this judgment by its English acronym, the "RAC", which stands for the Railway Assets Corporation.

[2] I dismissed the plaintiff's application for the reasons set out here.

Material Background Facts

The Seremban Sentral Project

[3] In 2012, the Executive Council of the Economic Planning Unit of the Prime Minister's Department approved a plan for the development of a project known as Seremban Sentral. This plan was subsequently approved by the Cabinet of Ministers. The proposed development included an integrated transportation hub for the city.

[4] Prima was given the responsibility to undertake an affordable housing scheme within the Seremban Sentral development. The mandate of Prima under the Perumahan Rakyat 1Malaysia Act 2012 included addressing the country's sustainable housing needs.

[5] The plan would involve the conversion of lands currently specified as railway reserved land, including the land that was the subject matter of the present dispute. It was not in dispute that, as part of the terms of the development, RAC would receive RM25 million as payment and that 55 units of quarters would be built for railway workers.

[6] Regrettably, no agreement was ever signed between Prima and the RAC to document the arrangement. Despite this, work progressed on the site that had been earmarked.

The Subject Land

[7] The land that is the subject of the dispute was, prior to its transfer to Prima, registered in the name of the Federal Lands Commissioner. It was not in material dispute that, at all material times, the land was gazetted as railway reserve.

[8] According to the RAC, the issue document of title to the land had been in its possession. In February 2018, a new title was issued. This title still recorded the Federal Lands Commissioner as the registered proprietor, but possession of the title was given to Prima. The new issue document of title was issued without the previous title document ever having been surrendered.

[9] On 14 December 2018, the subject land was transferred from the Federal Lands Commissioner to Prima. On 7 September 2020, the RAC lodged a caveat over the subject land.

Issue

[10] An issue that arose was whether the land could validly be transferred from the Federal Lands Commissioner to Prima, given that, pursuant to ss. 92 and 93 of the Railways Act 1991, property in the subject land would have vested in the RAC.

A **Analysis**

Vesting Of Railway Assets

[11] As mentioned above, the RAC is a statutory corporation established under the Railways Act 1991. The functions of the RAC include to manage, B administer and maintain all railway property and rights and to undertake development and redevelopment of railway infrastructure. Members of the RAC include representatives from the Ministry of Transport, the Treasury and the Economic Planning Unit as well as the Federal Lands Commissioner.

[12] The Railways Act 1991 repealed the Railway Ordinance 1948 and C dissolved the Malayan Railway Administration that had been established under the Ordinance. All property belonging to the Malayan Railway Administration also became vested in the RAC by operation of law. This is provided in s. 92 of the Railways Act 1991, which reads as follows:

> 92 Dissolution of Malayan Railway Administration and vesting of its D property in the Corporation
>
> (1) The Malayan Railway Administration in existence under the repealed Ordinance is dissolved.
>
> (2) All property, rights and liabilities of the Malayan Railway Administration under the repealed Ordinance shall, upon the E commencement of this Act, vest in the Corporation without any conveyance, assignment or transfer whatsoever and all references to "Malayan Railway Administration", "Malayan Railway", or "General Manager, Malayan Railway" in relation to such property in any instrument, deed, title, document or written law shall be construed as if all such references were references to the "Railway Assets Corporation". F

[13] In addition, all land that were held or acquired by the Federal Lands Commissioner under the Railway Ordinance 1948 also became vested in the RAC by operation of law, pursuant to s. 93 of the Railways Act 1991:

> 93 Vesting of property in the Corporation G
>
> All property vested in, held or acquired by the Federal Lands Commissioner under the repealed Ordinance shall vest in the Corporation under this Act without any conveyance, assignment or transfer whatsoever for the like title, estate, or interest and on the like tenure as the same was vested or held immediately before the commencement of H this Act and all references to the "Federal Lands Commissioner" in relation to such property in any instrument, deed, title, document or written law shall be construed as if all such references were references to the "Railway Assets Corporation".

[14] Importantly, the closing words of s. 93 provide that all titles bearing I the name of the Federal Lands Commissioner in respect of properties vested pursuant to s. 93 would be construed as being in the name of the RAC.

[15] It was the RAC's position that the subject land had vested in the RAC pursuant to s. 93. There was nothing in evidence before me that would cause me to disagree with this proposition.

[16] Now, if the subject land was in law and fact the property of the RAC, how had the transfer been effected from the Federal Lands Commissioner to Prima on 14 December 2018 without the assent or even knowledge of the RAC at the material time? It appeared to me that, absent such consent, the Federal Lands Commissioner would not have been seised with the capacity to effect the transfer of the subject land to Prima, for even though its name was on the title, the actual owner, by reason of the closing words of s. 93, was the RAC.

[17] It was plain to me that, for this reason, the RAC possessed a caveatable interest over the subject land, and therefore the originating summons ought rightly be dismissed.

Postscript

[18] It would not have been lost on the reader that both the plaintiff and the defendant in this case are public interest corporations under the effective control of the Federal Government. As pointed out above, members of the RAC include the Federal Lands Commissioner itself, as well as representatives from the Treasury and the Economic Planning Unit. The EPU was the authority that had initially green-lighted the Seremban Sentral project in the first place.

[19] In my estimation, the dispute between the parties was never a real legal dispute over the ownership of the land, but for all practical purposes centred upon the question of fair compensation that was to be given to the RAC for the surrender of its railway lands to the project. As matters stood, the RAC was expected to give up its assets without any enforceable commitment on the part of Prima to adhere to the terms of the Cabinet approval.

[20] If the members of the RAC were reluctant to relinquish the land in this way, it would be understandable why this was so. As members of a public interest corporation, they would owe a duty to the RAC to act honestly in its best interests.

[21] There are a small number of disputes which end up being litigated in the courts but which ought more properly and effectively addressed outside the justice system. In my respectful view, this was one such case.

[22] The glaringly obvious solution, it appeared to me, was for the matter to be escalated up the chain of command so that a mutually acceptable solution could be attained. For reasons best known only to the parties, this was not done in the present instance.